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JUL 28 2004

In re Application of:

DICKEN *et al.*

Serial No.: 10/055,421

Filed: January 22, 2002

Attorney Docket No.: PHNL 010076

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DECISION

This is a decision on the petition filed March 31, 2004, to withdraw the holding of abandonment under MPEP § 711.03(c). This petition has been treated as a petition under 37 C.F.R. § 1.181, to withdraw the holding of abandonment. No fee is required.

The petition is **GRANTED**.

The application was held abandoned for failure to timely file a proper response to the final Office action mailed on April 28, 2003. A proposed amendment was filed on June 16, 2003. An advisory action was mailed on July 15, 2003. A Notice of Abandonment was mailed on March 13, 2004.

The requester asserts that on July 29, 2003, a response to the final Office action was filed. The response included a Request for Continued Examination (RCE), with a request to consider the after final amendment filed June 16, 2003. To support this assertion, the requester has provided a copy of the response that includes a proper Certificate of Mailing under 37 C.F.R. § 1.8, and a copy of the date stamped postcard receipt which acknowledges receipt in the USPTO on August 05, 2003.

A review of the application file record reveals that the above-identified response having been acknowledged as being received in the PTO on August 05, 2003, is not of record in the application file and cannot be located. However, M.P.E.P. § 503 states, "A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO." Accordingly, it is concluded that the response was timely received in the PTO but lost somewhere after receipt thereof.

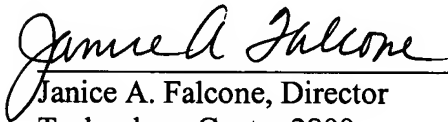
Decision on Petition

For the above stated reason, the petition is granted. The Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn. The application is restored to pending status.

The copy of the response submitted with the petition on March 31, 2004, is accepted since the response originally submitted was apparently lost.

The application file is being forwarded to the Technology Center 2800 support staff for processing the RCE. From there, the application will be forwarded to the examiner for taking further action.

Inquiries regarding this decision should be directed to Clayton E. LaBalle at (571) 272-1594.



Janice A. Falcone, Director
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